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# In the Supreme Court of the United States

OCTOBER TERM, 1977

**No. 73, Original**

STATE OF CALIFORNIA,

*Plaintiff,*

v.

STATE OF NEVADA,

*Defendant.*

## Motion for Leave to File Amended Complaint and Amended Complaint

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OCTOBER TERM, 1977

**No. 73, Original**

STATE OF CALIFORNIA,

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v.

STATE OF NEVADA,

*Defendant.*

## Motion for Leave to File Amended Complaint

The State of California, appearing through its Attorney General Evelle J. Younger, respectfully requests leave of the Court to file its amended complaint in the instant action submitted herewith.

### STATEMENT IN SUPPORT OF MOTION

#### A. Modern Surveying Methods Are Capable of Locating Boundaries with Great Accuracy

The State of California, plaintiff, reiterates its plea that the "Von Schmidt" line from Lake Tahoe to the Oregon border should be adjudged the established boundary between California and Nevada based on the doctrine of acquiesced boundaries. However, in the event this Court should find that the "Von Schmidt" line is not the proper boundary, a feasible alternative in the form of resurvey

exists. Atlhough plaintiff believes the Court has inherent power to order a resurvey in this case in any event (*Oklahoma v. Texas* (1926) 272 U.S. 21), this motion for leave to file amended complaint is made so that California's prayer will set out the alternatives clearly before the Court.

In the course of discovery, historical research, and study of the theory and practice of boundary determination pursuant to this action, plaintiff has recently become apprised of the fact that within the last few years great strides have been made in the field of boundary determination. Advanced techniques of boundary determination which are available and which would permit a resurvey of unprecedented accuracy warrant consideration by the Court as an alternative to the relief prayed for by plaintiff in its complaint.

Plaintiff has alleged, on pages 9 and 10 of its motion for leave to file complaint, and in paragraph X of its complaint, that the line set by Von Schmidt in 1872 between the thirty-ninth and forty-second degrees north latitude has been questioned as to its accuracy in representing the location of the meridian of one hundred twenty degrees of longitude west of Greenwich. At the time of the filing of the complaint in this action, plaintiff was not fully aware of the potential impact that the latest technology could have in precisely locating geographical boundaries.

Although there are several modern techniques designed for or capable of locating points generally on the earth with remarkable precision, of particular note is a new system recently called to plaintiff's attention which has revolutionized the measuring of geographical boundaries and which is well suited to locating the boundary in question. This system is called ARIES (Astronomical Radio Interferometric Earth Surveying) and was developed by the California Institute of Technology's Jet Propulsion Laboratory in

conjunction with the National Aeronautics and Space Administration (NASA). Very simply, this system which is a Very-Long-Baseline Interferometry (VLBI) technique operates by measuring from two or more stations relative arrival times of radio signals transmitted by quasars and radio galaxies billions of light years away. Because ARIES is a radio astronomic technique and does not depend upon gravity as an earth reference, it is capable of making extremely accurate geographic determinations free of the major sources of error caused by the gravitational force, the wobble of the earth's axis, and the inaccuracy of time signals typically associated with traditional optical methods. (C. C. Counselman, III, *Very-Long-Baseline Interferometry Techniques Applied to Problems of Geodesy, Geophysics, Planetary Science, Astronomy, and General Relativity,* Proceedings of the IEEE (September 1973) vol. 61, No. 9, p. 1225; Peter F. MacDoran, *Radio Interferometry for International Study of the Earthquake Mechanism,* Acta Astronautica (Pergamon Press 1974) vol. 1, pp. 1427-1444.)

### B. Leave to File an Amended Prayer Should Be Permitted in the Interests of Justice and a Full Consideration of the Merits

Plaintiff, by asserting this motion for leave of the Court to amend its complaint to include an alternative form of relief based on its recently acquired knowledge of current developments in the technology applicable to geographic boundary location, seeks to bring before the Court significant and relevant information which it believes is meritorious and in the interests of justice.

Rule 15, subdivision (a) of the Federal Rules of Civil Procedure provides as follows:

> "(a) Amendments. A party may amend his pleading once as a matter of course at any time before a

> responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and *leave shall be freely given when justice so requires.* A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders." (Emphasis added.)

The courts have consistently carried out the express mandate of this rule by freely and liberally granting leave to amend pleadings for the purpose of bringing all appropriate issues and facts before the court in the interests of justice. (*Foman v. Davis* (1962) 371 U.S. 178; *Dombrovskis v. Murff* (S.D.N.Y 1959) 24 FRD 302; 3 Moore's Federal Practice (2d ed. 1974) par. 15.08; 7 Volz, West's Federal Practice Manual (2d ed. 1970) par. 7984; Wright, Federal Courts (3d ed. 1976) § 66.)

Moore, in his work cited above, sums up the state of the law on this point aptly and concisely as follows:

> "Recognizing that the entire spirit of the rules is to the effect that controversies shall be decided on the merits, the courts have not been hesistant to allow amendments for the purpose of presenting the real issues of the case, where the moving party has not been guilty of bad faith and is not acting for the purpose of delay, the opposing party will not be unduly prejudiced, and the trial of the issues will not be unduly delayed." (3 Moore's, Federal Practice (2d ed. 1974) par. 15.08, pp. 875, 876.)

### C. The Court Has Inherent Power to Order a Resurvey

The alternative prayer for relief which plaintiff is hereby seeking to include in its complaint is appropriate to this action. Where the location of an interstate boundary is in dispute and where there is insufficient evidence to invoke the principle of acquiescence, the Court has inherent power to order a resurvey. (*Oklahoma v. Texas, supra,* 272 U.S. 21.)

In the case of *Oklahoma v. Texas* the Court was deciding the location of the boundary between the states along the one hundredth meridian of longitude from the Red River to the parallel of 36° 30′ north latitude which constitutes the eastern boundary of the panhandle of Texas and the main western boundary of Oklahoma. Several surveys had been made of the one hundredth meridian between the years of 1859 and 1902. Oklahoma and the United States, as intervenor, contended that the proper boundary was that line derived from an 1859 survey on the basis of res judicata of a previous judgment. Oklahoma also asserted that line on the doctrine of acquiescence, and Texas maintained that the boundary should be a line running north from a monument set by the direction of Congress and approved by the Secretary of Interior established in 1902 which fell eastward of the 1859 line.

The Court rejected the contention of Oklahoma and the United States of res judicata because the previous judgment did not rule on the effect of the 1859 survey; it rejected the contention of Texas because Congress did not authorize the running of a line northward from the approved monument; and it rejected the contention of Oklahoma based on acquiescence because the essential element of exercise of jurisdiction acquiesced in for a long period of years was lacking. The Court held that the boundary

line was the true one hundredth meridian and ordered that the line be accurately located under the direction and approval of the Court.

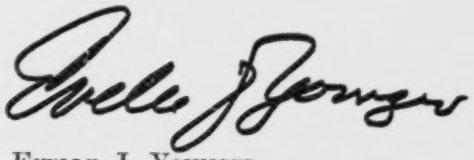
Therefore, when the location of an interstate boundary line is still in doubt after all the evidence has been considered, the Court has inherent power to order that a survey be made to determine the proper location of such boundary. Plaintiff requests the Court to consider this alternative in the present action.

## CONCLUSION

Plaintiff therefore requests the Court, in the interests of justice, to grant plaintiff leave to file the amended complaint attached hereto.

DATED: April 25, 1978.

Respectfully submitted,



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**No. 73, Original**

STATE OF CALIFORNIA,

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v.

STATE OF NEVADA,

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## Amended Complaint

The State of California appearing herein through Evelle J. Younger, its Attorney General, acting pursuant to the authority and powers vested in him by Article V, section 13 of the Constitution of California, institutes this original action against the State of Nevada.

I

The original jurisdiction of this Court is invoked under Article III, Section 2, clause 2 of the Constiution of the United States and 28 U.S.C. Section 1251.

II

The State of California was admitted to the Union of the United States of America by Act of Congress found in the United States Statutes at Large, vol. 9, p. 452. The act

approved the California Constitution of 1849 which provides in pertinent part:

> The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects with the thirty-ninth degree of north latitude. . . Article XII, Section 1.

An accurate representation of the placement of this boundary with respect to the two states is attached as Exhibit 1 and incorporated by reference herein.

III

The State of Nevada was admitted to the Union of the United States by Act of Congress and Presidential Proclamation. United States Statutes at Large, vol. 13, Ch. 36, p. 30; and Proclamation No. 22, 13 Stats. at Large, App. p. 63. The Act and Proclamation approved the Nevada Constitution, which in relevant part provides that the western boundary of Nevada shall be the eastern boundary of California and further provides that:

> "all such territory lying west of and adjoining the boundary line herein prescribed, which the State of California may relinquish to the Territory or State of Nevada, shall thereupon be embraced within and constitute a part of this state." Nevada Constitution, Article 14, section 1.

IV

Following border disputes that led to armed conflict, the State of California and the Territory of Nevada in 1863 agreed to survey and post the segment of the California-Nevada boundary north of Lake Tahoe to Oregon; i.e., the

one hundred and twentieth meridian between the forty-second and thirty-ninth north latitudes. The survey, which led to establishment of a line hereinafter referred to as the "Houghton-Ives" line, was conducted by California Surveyor General, J. F. Houghton, and the Commissioner for the Territory of Nevada, Butler Ives.

V

The "Houghton-Ives" line was adopted by the California Legislature in 1864 as the eastern boundary line of the State of California (Cal. Stats. 1864, Ch. 455, pp. 506-507, reenacted as California Government Code section 160 in 1943 Cal. Stats. 1943, Ch. 134, p. 896.) It was observed by the State of California from 1864 to 1872.

VI

The "Houghton-Ives" line was adopted in 1865 by the Nevada Legislature as the legal western boundary line of the State of Nevada. Nevada Stats. 1864-1865, Ch. 31, pp. 133-134, 347. It was observed by the State of Nevada from 1865 to 1872.

VII

In 1872 the United States Government through its General Land Office contracted with Allexey W. Von Schmidt to survey, post and monument the one hundred twentieth meridian between the forty-second and thirty-ninth degrees north latitude. This line, hereinafter referred to as the "Von Schmidt" line, was surveyed, posted and monumented. Its location varies from 3000 to 6000 feet east of the "Houghton-Ives" line. It has been recognized and observed by both states and their governmental subdivisions from 1872 to the present time in the provision of governmental services, in assessment and taxing practices,

and in the exercise of civil and criminal jurisdiction, and constitutes the lawful boundary between the states by acquiescence.

VIII

There is a controversy between the States of California and Nevada in that by statute, the State of Nevada asserts dominion and jurisdiction to territory over which the State of California has exercised dominion, jurisdiction and control for 105 years for all governmental purposes; such territory being the lands located in the area between the "Von Schmidt" and the "Houghton-Ives" lines. Said area is approximately 3000 feet wide at the north end of Lake Tahoe, and increases to 6000 feet wide further north. The State of Nevada thereby claims right, title or interest in said land adverse to the State of California.

IX

The State of California has, since 1872, continuously exercised jurisdiction in the said territory described in Paragraph VIII above, all without objection from the defendant State of Nevada. The incidents of jurisdiction exercised by said State of California include, but are not limited to, assessments, taxing, the provision of governmental services, and the exercise of police power. Nevada has acquiesced in California's exercise of dominion and jurisdiction, and California has therefore obtained title to the land in question.

X

The propriety of the "Von Schmidt" line has, from time to time since 1872, been questioned in the reports of governmental agencies. Said reports have caused uncertainty and the recurring possibility of challenges to the lawfulness of such boundary line on the part of both governmental agencies and private persons. A map of the north-

ern shore line of Lake Tahoe indicating the location of various lines as set forth above is attached as Exhibit 2 and incorporated by reference herein. However, neither the State of California nor the State of Nevada has demanded a resurvey of the "Von Schmidt" line with respect to the affected area, and both states have continuously observed said line since 1872.

XI

The statutory claim of Nevada and the questions raised concerning the boundary more particularly described in Paragraphs IX and X above have created, and will continue to create, uncertainty of titles, and may cause a multiplicity of actions involving the titles to individual parcels, challenges to assessments, the payment of taxes and the defense of criminal actions, and attempts to conduct businesses which may be unlawful in California. The claim and actions of the State of Nevada therefore cause, and will continue to cause, irreparable injury to the plaintiff, for which there is no adequate remedy at law.

WHEREFORE, PLAINTIFF PRAYS:

1. That a decree be entered adjudging the eastern boundary of California between the thirty-ninth and forty-second degrees north latitude to be the "Von Schmidt" line;

2. That a decree be entered adjudging that the State of Nevada has no right, title or interest to any such lands west of the "Von Schmidt" line; and perpetually enjoining the defendant from asserting any right, title or interest to said land or any part thereof, or from interfering with the possession of California in said land;

3. That this Court issue an interlocutory decree in aid of its jurisdiction prohibiting the State of Nevada, its officers, employees, agents, courts, agencies and political subdivisions from exercising any acts of jurisdiction in the

lands west of the "Von Schmidt" line during the pendency of this action;

4. That in the alternative, should the Court not adjudge the eastern boundary of California between the thirty-ninth and forty-second degrees north latitude to be the Von Schmidt line, a resurvey be ordered by the Court to determine the true location of the meridian of one hundred twenty degrees of longitude west from Greenwich between the thirty-ninth and forty-second degrees north latitude, and that a decree be entered adjudging the line determined by such court-ordered survey to be the eastern boundary of California between the thirty-ninth and forty-second degrees north latitude;

5. For plaintiff's costs of suit herein; and

6. For such other and further relief as may be proper.

DATED: April 25, 1978.

Respectfully submitted,

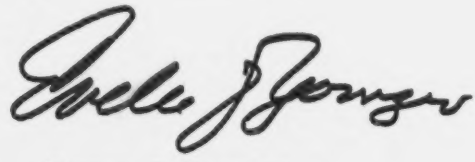

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**EXHIBIT 1 OF AMENDED COMPLAINT**

**EXHIBIT 2 OF AMENDED COMPLAINT**